Supreme Court, U.S.
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No. 04-

In the Supreme Court of the United States

MARIE HAHN,

Petitioner,

v.

THE VILLAS AT ST. THERESE ASSISTED LIVING, INC.,

Respondent.

On Petition for a Writ of Certiorari to the Ohio Supreme Court

PETITION FOR WRIT OF CERTIORARI

MARIE HAHN
pro se

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QUESTIONS PRESENTED FOR REVIEW

Whether a state statute, O.R.C. 2505.02(A)(2), which is in confiict with decisions of the United States Supreme Court, can preclude immediate appeal of a preliminary injunction which restrains rights protected by U.S.C.A. Constitutional Amendment I?

Whether O.R.C. 2505.02(A)(2) is overbroad and/or unconstitutional as it effects parties not before the Court?

Whether residents of the State of Ohio are entitled to due process and equal protection of the laws with regard to access to the Courts of Ohio to appeal preliminary injunctions which restrain rights protected by U.S.C.A. Constitution Amendment I?

PARTIES TO THE PROCEEDINGS

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner

Marie Hahn

Respondents

The Villas at St. Therese Assisted Living, Inc.; Bishop James A. Griffin; and the Diocese of Columbus.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition this Court for a writ of certiorari to review the judgment rendered in this case by the Supreme Court of Ohio.

OPINIONS BELOW

The opinions of the lower courts in this case have not been published. The October 14, 2003, Order of Preliminary Injunction of the Franklin County Court of Common Pleas is reprinted at App. 8a; the November 26, 2003 Journal Entry of Dismissal of the Court of Appeals of Ohio Tenth Appellate District, is reprinted at App. 6a; the December 18, 2003 Journal Entry of the Court of Appeals of Ohio, Tenth Appellate District is reprinted at App. 4a; the Entry of the Supreme Court of Ohio is reprinted at App. 3a; the Entry of Dismissal of the Supreme Court of Ohio is reprinted at App. 1a.

STATEMENT OF JURISDICTION

The Supreme Court of Ohio entered its final judgment denying Petitioner Marie Hahn's appeal of a preliminary injunction, on April 28, 2004. Petitioner respectfully invokes this Court's jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the following provisions of the United States Constitution:

Amendment I - Freedom of Religion, Speech and Press; Peaceful Assembly; Petition of Grievances:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment XIV, Section I, which provides in relevant part:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property; without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article VI, Clause 2. Supreme Law of Land:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land,; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

STATUTORY PROVISIONS INVOLVED

This case involves the interpretation and application of Ohio Revised Code § 2505.02. Specifically §§ 2505.02(A)(1)(2) and 2505.02(B)(2) are the relevant statutes in the Petition.

§ 2505.02:

"(A) AS USED IN THIS SECTION:

(1) 'SUBSTANTIAL RIGHT" MEANS A RIGHT THAT THE UNITED STATES CONSTITUTION, THE OHIO CONSTITUTION, A STATUTE, THE COMMON LAW, OR A RULE OF PROCEDURE ENTITLES A PERSON TO ENFORCE OR PROTECT.

(2) 'SPECIAL PROCEEDING" MEANS AN ACTION OR PROCEEDING THAT IS SPECIALLY CREATED BY STATUTE AND THAT PRIOR TO 1853 WAS NOT DENOTED AS AN ACTION AT LAW OR A SUIT IN EQUITY.

(B) AN ORDER IS A FINAL ORDER THAT MAY BE REVIEWED, AFFIRMED, MODIFIED, OR REVERSED, WITH OR WITHOUT RETRIAL, WHEN IT IS ONE OF THE FOLLOWING:

(2) AN order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment . . ."

This case also involves the application of Ohio Revised Code 3721.13; the Patient's Bill of Rights. Specifically §§ 3721.13(A)(15), 3721.10(D), 3721.13(B), 3721.14(E)(3), 3721.13(A)(21), 3721.13(C) are the relevant statutes involved in this Petition.

§ 3721.13(A)(15) provides:

"(A) The rights of residents of a home shall include, but are not limited to: the following:

(15) The right to exercise all civil rights, unless the resident has been adjudicated incompetent pursuant to Chapter 2111. of the Revised Code and has not been restored to legal capacity, as well as the right to the cooperation of the home's administrator in making arrangements for the exercise of the right to vote;"

§ 3721.10(D) provides:

"(D) 'Sponsor' means an adult relative, friend, or guardian of a resident who has an interest or responsibility in the resident's welfare."

§ 3721.13(B) provides:

"(B) A sponsor may act on a resident's behalf to assure that the home does not deny the residents' rights under section 3721.10 to 3721.17 of the Revised Code."

§ 3721.14(E)(3) provides:

"To assist in the implementation of the rights granted in division (A) of section 3721.13 of the Revised Code, each home shall provide:

(E) Access to the following persons to enter the home during reasonable hours, except where such access would interfere with resident care or the privacy of residents:

(3) A resident's sponsors;"

§ 3721.13(A)(21) provides:

"(A) The rights of residents of a home shall include, but are not limited to, the following:

(21) The right upon reasonable request to private and unrestricted communications with his family, social worker, and any other person, unless not medically advisable as documented in his medical record by the attending physician, except that communications with public officials or with his attorney or physician shall not be restricted. Private and unrestricted communications shall include, but are not limited to, the right to:

(c) Private visits at any reasonable hour."

§ 3721.13(C) provides:

"(C) Any attempted waiver of rights listed in division (A) of this section is void."

STATEMENT OF THE CASE

I. Overview of the Case

Appeal of a preliminary injunction which restrains the First Amendment right of freedom of association was denied Petitioner, Marie Hahn, by both the Court of Appeals of Franklin County, Ohio, Tenth Appellate District, and the Supreme Court of Ohio. The Court of Appeals and the Supreme Court of Ohio also denied Petitioner's Motions For Stay of Preliminary Injunction. These rulings pertaining to

Constitutional questions are in conflict with relevant decisions of the Supreme Court of the United States in National Socialist Party of America v. Village of Skokie, 432 U.S. 43 (1977) and M.I.C., Ltd. v. Bedford Township, 463 U.S. 1341 (1983).

Ohio Revised Code 2505.02(A)(2) is unconstitutional and/or overbroad as it precludes appeal of a preliminary injunction which restrains First Amendment rights including First Amendment rights of parties not before the Court. Residents of the State of Ohio, including Petitioner, Marie Hahn, are entitled to due process and equal protection of the laws, which includes immediate appeal of a preliminary injunction which restrains First Amendment rights, or a stay of the preliminary injunction pending appeal.

In the matter before the Court there has not been separation of Church and State as required by the Constitution.

II. Background of the Case

Petitioner, Marie Hahn, and her husband, Michael Hahn, have known Monsignor Clement Faistl and become his close friends since 1995 when he resided at his former parish of Christ the King. Petitioner and her husband assisted Monsignor Faistl at Christ the King and provided assistance to him at The Villas at St. Therese, a state licensed assisted living facility, since he moved there in March, 2002.

Monsignor Faistl signed his own contract with Respondent, The Villas and agreed to pay the monthly rental fee of $2,650.00. Pursuant to the contract which Monsignor Faistl signed with Respondent, The Villas, he could terminate the Agreement if he wished. The term of the Agreement was

for a month to month basis. As part of his contract with The Villas, Monsignor Faistl was provided a copy of the Rights of Residents Of A Home, (Patients' Bill of Rights), O.R.C. 3721.13, which guaranteed him among other things, the right to exercise his civil rightsr (O.R.C. 3721.13(A)(15)), which would include the right to leave if he wished and be free from false imprisonment.

Any "sponsor" of Monsignor Faistl as defined in O.R.C. 3721.10(D), pursuant to O.R.C. 3721.13(B), is guaranteed the right to "act on a resident's behalf to assure that the home does not deny the resident's rights under section 3721.10 to 3721.17 of the Revised Code." Pursuant to O.R.C. 3721.14(E)(3), a resident's "sponsor" is to be provided access to the resident. At the hearing on the preliminary injunction on October 10, 2003, the trial judge ruled from the bench that Petitioner, Marie Hahn, is a "sponsor" as defined in the Ohio Revised Code.

Respondent, The Villas also provided Monsignor Faistl as part of their contract with him a copy of their own Residents Rights which included, among other things, the right to: "communicate and socialize freely with individuals of their own choosing" and "live free from involuntary confinement . . ."

Petitioner, Marie Hahn, had had a personal private religious association with Monsignor Faistl for at least eighteen months since he moved to The Villas. Monsignor Faistl has been Petitioner's religious advisor and counselor on a daily basis. He has also been her Confessor. Petitioner placed her trust in his guidance and his advice to her was held in the utmost confidence. Petitioner assisted Monsignor Faistl with saying his Mass everyday in his room on a one to one basis and Petitioner prayed with him consistently. The

evidence in the record supports the fact that because of the preliminary injunction, Monsignor Faistl has been deprived of his First Amendment right of freedom of association with Petitioner and therefore, he has been deprived of saying his own Mass.

On August 7, 2003, the Administrator of The Villas, Sister Michael Sweeney, and Sister Lois Baniewicz restricted Petitioner, Marie Hahn's visitation with Monsignor Faistl in violation of O.R.C. 3721.13(A)(21), because of an unsubstantiated accusation that Sister Lois heard Petitioner raise her voice to Monsignor Faistl through his closed door. Monsignor Faistl is hearing impaired and his hearing aids were not working on the day in question as confirmed by his hearing doctor in a letter which is part of the evidence in the record.

Monsignor Faistl verbally requested to the Administrator that the restrictions on his visitation with Petitioner be lifted and when he was refused, he wrote a letter to the Administrator in accordance with O.R.C. 3721.13(A)(21) requesting that the restrictions be lifted and affirming that Marie Hahn had never abused him in any way. The Administrator did not respond to Monsignor Faistl's letter.

Following O.R.C. 3721.13(B), and with Monsignor Faistl's approval, Petitioner contacted the Ombudsman's Office of the Ohio Department On Aging. The State Ombudsman assigned a Regional Ombudsman, Rita Allen, who works for the Diocese of Columbus, to the case. Rita Allen did not report the matter to the Ohio Department of Health as she stated was her usual procedure, but on August 22, 2003, she stopped Petitioner's and her husband's visitation of Monsignor Faistl at the instruction of the Bishop of Columbus. She stated that she was submitting her findings

to the Bishop to make the decision concerning Monsignor Faistl's right of unrestricted visitation pursuant to O.R.C. 3721.13(A)(21), who had no legal authority to do so. The Bishop of Columbus banned Petitioner from all visitation of Monsignor Faistl on August 26, 2003t in a letter. The Ohio Department of Health cited The Villas for violation of O.R.C. 3721.13(A)(21), referring to the Bishop's letter as evidence that Respondent, The Villas was planning to continue to restrict Petitioner's visitation with Monsignor Faistl. In Respondents' answer to Petitioner's amended Verified Counterclaim they state ". . . Plaintiffs admit that the Bishop of Columbus cannot waive Monsignor Faistl's state rights under the Patient's Bill of Rights." This includes Monsignor Faistl's right to exercise all civil rights. (O.R.C. 3721.13(15). O.R.C. 3721.13©) states:

> "(C) Any attempted waiver of the rights listed in division (A) of this section is void."

However, the Bishop did not follow this in this case because there was no separation of Church and State.

The Bishop of Columbus violated Petitioner's Constitutional rights and her state rights under O.R.C. 3721.13(B) and 3721.13(E)(3) as a "sponsor" because there was no separation of Church and State.

On August 30, 2003, Monsignor Faistl attempted to leave The Villas on his own and he was prevented from leaving by Respondent, The Villas. On at least two occasions he requested that Attorney Don Chapin assist him in leaving The Villas. Attorney Chapin was denied access to Monsignor Faistl and the police were called. On one occasion, Mr. Chapin witnessed intimidation of Monsignor Faistl in his presence. If Monsignor Faistl was not allowed to leave at that

time on his own and an attorney could not help him leave, no one could have helped him and thus he was being falsely imprisoned against his will.

Attorney Don Chapin filed a lawsuit in Monsignor Faistl's name and his own name against The Villas and the Diocese of Columbus stating in part in his Complaint, which is part of the evidence in the record in this case:

> "Defendants have taken additional steps to isolate and intimidate Father Faistl. They have changed his telephone number and refused to give him the new number. As a result, no one is able to call Father Faistl. They have also prevented him from using the telephone to call out. They have illegally barred Father Faistl's friends from visiting him at the facility. Father Faistl has also been warned that, should he leave, he will not be permitted to take with him the accoutrements necessary for him to perform the Mass, a profound threat to a devout priest."

Attorney Chapin's lawsuit is still pending.

Fearing that Monsignor Faistl was in imminent danger, on September 25, 2003, Petitioner, Marie Hahn, went to The Villas, to visit Monsignor Faistl. He opened the door to the outside in the hall to let her in to visit. He informed Petitioner that he could not leave The Villas and that he was not allowed to use his telephone. Monsignor Faistl appeared to be in poor physical condition to Petitioner. An aide came by Monsignor Faistl's room and threatened Petitioner, to hold her against her will. Petitioner, Marie Hahn, left the premises

III. Proceedings Below

On September 26, 2003, the attorney for Respondent, The Villas, left a message on Petitioner, Marie Hahn's voice mail less than an hour before he said that he was going before a judge to file an action against her. He did not inform Petitioner of the courtroom or the name of the judge. It would have been impossible for Petitioner to even get to the Court downtown in time, even if she had played the message immediately and knew which courtroom was involved.

Respondents, The Villas, filed a Verified Complaint for Trespass and Injunctive Relief and a Motion for a Temporary Restraining Order, to enjoin Petitioner from entering the premises of The Villas and from taking any action to remove Monsignor Faistl from The Villas even though he has no guardian and he should have been free to leave The Villas if he wished, on September 26, 2003, in the Court of Common Pleas of Franklin County. The restraining order was granted. (Appendix F, Order of Preliminary Injunction granted by the Franklin County Court of Common Pleas, Columbus, Ohio). Petitioner Marie Hahn filed a Motion To Dissolve Temporary Restraining Order on October 1, 2003, based on the fact that Respondent was violating O.R.C. 3721.13(A)(21), the right of a resident of a "home" to unrestricted visitation and had "unclean hands" when Respondent came to the trial court for a temporary restraining order, and based on the fact that Monsignor Faistl is his own person and free to make his own decisions. (On September 30, 2003, the Ohio Department of Health issued a citation to Respondent, The Villas, for violation of O.R.C. 3721.13(A)(21))o Monsignor Faistl was entitled to unrestricted visitation as a matter of law when Petitioner, as his "sponsor," visited him on September 25, 2003. Respondent did not respond to Petitioner's Motion To Dissolve, which was overruled by the trial court in granting

the preliminary injunction to Respondent at the hearing on October 10, 2003.

Petitioner filed an Answer on October 9, 2003, asserting her rights as a "sponsor," pursuant to O.R.C. 3721.13(B) and O.R.C. 3721.14(E)(3). Pursuant to O.R.C. 3721.14(E)(3), as a "sponsor," Petitioner was to be provided access to Monsignor Faistl. Petitioner filed a Motion To Join An Additional Defendant To Her Counterclaim on October 9, 2003; Bishop James A. Griffin and the Diocese of Columbus. Petitioner also filed a Motion For Temporary Restraining Order on October 9, 2003, informing the court of Monsignor Faistl's deteriorating physical condition which she observed on September 25, 2003 and that he had not seen five of his doctors, because The Villas did not assume Petitioner's responsibility for taking him to his doctors for tests, evaluation, treatment, and any changes in medication. Petitioner's Motion For Temporary Restraining Order was overruled by the trial court in granting the preliminary injunction to Respondent.

On October 21, 2003, Petitioner filed an Amended Verified Counterclaim for Injunctive Relief, which set forth Count Three - Violation of Defendant's Right of Freedom of Association Guaranteed by The First Amendment. On October 23, 2003, Petitioner filed a Motion For Reconsideration, which included law and argument supporting her Constitutional right of freedom of association with Monsignor Faistl to further their religious beliefs.

No notice of the filing of the Preliminary Injunction was sent to Petitioner by Respondents. Because Petitioner had no knowledge that the 30 days had begun to run on October 14, 2003, Petitioner expediently filed an appeal with the Court of

Appeals of Franklin County, Ohio, Tenth Appellate District, on November 12, 2003.

Petitioner also filed with the Court of Appeals a Motion To Dissolve Preliminary Injunction Granted To Plaintiffs, The Villas, and a Motion To Grant Preliminary Injunction to Petitioner on November 13, 2003, setting forth that the preliminary injunction is a final appealable order as it imposes restraint on the exercise of freedom of association and it is an order that affects a substantial right made in a special proceeding. Petitioner cited United States Supreme Court decisions, which included Nationalist Socialist Party v. Skokie, 432 U.S. 43, 44 (1977) and Roberts v. United States Jaycees, 468 U.S. 609 (1984), which sets forth the two types of freedom of association guaranteed by the First Amendment. Petitioner also asserted that Respondent, The Villas, had no clear right to be entitled to an injunction because Monsignor Faistl has no guardian and would be free to leave if he wishes. Respondents filed a Motion To Dismiss and Memorandum In Opposition on November 24, 2003, setting forth argument that O.R.C. 2505.02(A)(2) precludes appeal of the preliminary injunction. On November 26, 2003, the Court of Appeals dismissed Petitioner's appeal (Appendix E, Journal Entry of Dismissal of the Court of Appeals of Ohio, Tenth Appellate District, November 26, 2003 "for lack of a final appealable order. . .")

On December 8, 2003, Petitioner filed an Application For Reconsideration and an Expedited Decision and Motion For Stay of Preliminary Injunction.

Attached as Exhibit B to Petitioner's Application For Reconsideration is an affidavit of Monsignor Faistl which states in part: "I wish to associate with Marie Hahn as a priest to help her spiritually;" "I wish to have Marie Hahn assist me

with my daily Mass and prayers;" "Marie Hahn has never attempted to remove me from The Villas against my will."

Attached to the Application For Reconsideration as Exhibit C is an affidavit of Sydney Lewis, who visited Monsignor Faistl. Monsignor Faistl directly expressed to Mr. Lewis his wish to associate with Marie Hahn as a priest.

Also attached as Exhibit E to Petitioner's Application For Reconsideration is a second affidavit of Monsignor Faistl in which he states: "In addition, I was unaware that The Villas had obtained a restraining order against Marie Hahn. I do not agree with the restraining order as I wish to associate with Marie Hahn as a priest."

On December 18, 2003, the Court of Appeals denied Petitioner's Application For Reconsideration, overruling Petitioner's Motion For Stay. (Appendix D, Journal Entry of the Court of Appeals of Ohio, Tenth Appellate District, December 18, 2003).

On December 24m 2003, Petitioner filed a Motion For Stay of Preliminary Injunction and An Expedited Decision in the Supreme Court of Ohio. The Supreme Court of Ohio denied Petitioner's Motion To Stay on January 21, 2004. (Appendix B, Entry of the Supreme Court of Ohio, January 21, 2004).

Petitioner filed a Memorandum In Support of Jurisdiction in the Supreme Court of Ohio on February 2, 2004. The Supreme Court of Ohio dismissed the appeal on April 28, 2004 "as not involving any substantial constitutional question." (Appendix A, Entry of dismissal of the appeal of the Supreme Court of Ohio, April 28, 2004).

After Petitioner received a report on or about October 30, 2003 from the Ohio Department of Health affirming that Respondent, The Villas, had been issued a citation for violation of O.R.C. 3721.13 (A)(21), Petitioner's husband, Michael Hahn, went to The Villas in early November to visit Monsignor Faistl. Only because of the citation issued by the Ohio Department of Health was he able to enter The Villas. Despite continued hostility from The Villas, he continued to visit Monsignor Faistl and support him with his assistance as Petitioner had done. Michael Hahn was concerned about Monsignor Faistl's health and well being at The Villas. When Monsignor Faistl was asked by Michael Hahn if he wished to leave The Villas, he said yes. Michael Hahn removed Monsignor Faistl and his possessions from The Villas on or about January 11, 2004, to another place of residence of Monsignor Faistl's choosing and Monsignor Faistl signed his own lease. After Monsignor Faistl left The Villas, the Bishop of Columbus, through his attorney, stated publicly on January 24, 2004 in the newspaper: "'We felt that the place for him was at the Villas and we wanted very much for him to be there,' Dan Ritter said. 'However, if he subsequently decided he wanted to go with Mr. Hahn, that's his choice . . . . We hope that he's getting care wherever he is.'"

REASONS FOR GRANTING THE PETITION

The Supreme Court of Ohio has denied Petitioner's Motion For Stay Of Preliminary Injunction which restrains her right of free dom of association under the First Amendment and the Supreme Court of Ohio has dismissed Petitioner's appeal ". . . as not involving any substantial constitutional question. . ." These rulings decided important federal questions in conflict with United States Supreme Court decisions which state that when First Amendment rights are restrained by an injunctionr either immediate appellate review or a stay of the injunction must be provided. See National Socialist Party of America v. Village of Skokie, 432 U.S. 43, 44 (1977):

> ". . . It finally determined the merits of petitioners' claim that the outstanding injunction will deprive them of rights protected by the First Amendment during the period of appellate review which, in the normal course, may take a year or more to complete. If a State seeks to impose a restraint of this kind, it must provide strict procedural safeguards; Freedman v. Maryland, 380 U.S. 51 (1965), including immediate appellate review, see Nebraska Press Assn. v. Stuart, 423 U.S. 1319,1327 (1975) (BLACKMUN, J. in chambers). Absent such review, the State must instead allow a stay. . ."

See M.I.C., Ltd. v. Bedford Township, 463 U.S. 1341, 1342 1343 (1983) :

> ". . . By its terms, the preliminary injunction was to continue in effect until a full trial on the matter was held or until further order of the court."

> ". . . Because of the delay involved, this prohibitation will remain in effect for a considerable period without any final judicial review of the trial court's order. In these circumstances, the requirement imposed by the First Amendment that a State provide procedures to 'assure a prompt final judicial decision,' Freedom v. Maryland, supra, at 59, has not been satisfied."

Petitioner, Marie Hahn, has been unable to obtain either immediate appellate review or a stay of the preliminary injunction from both the Court of Appeals of Franklin Countyr Ohio, Tenth Appellate District and the Supreme Court of Ohio. Petitioner petitions this Court for a writ of certiorari to review the judgments rendered in the state courts in this case, which depart from United States Supreme Court decisions and which have decided that prompt final judicial decisions as to the validity of the prior restraint on Petitioner's First Amendment rights is not necessary and that the restraint of her Constitutional rights can wait until after trial. These judgments are in conflict with the United States Supreme Court ruling in Elrod v. Burns, 427 U.S. 347, 373, 374 (1976):

> ". . . The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. See New York Times Co. v. United States, 403 U.S. 713 (1971)."

Monsignor Faistl is approaching 92 years of age and even though he no longer resides at The Villas and his health needs are now being properly taken care of and he has been able to resume his priestly duties with Petitioner's assistance, the pending lawsuit and the preliminary injunction which Respondents have against Petitioner are undermining his well being° Petitioner has a stigma caused by the invalid injunction

and the publicity of the matter in the newspaper, and, consequently, she is no longer accepted in the Catholic Community and neither is Monsignor Faistl, as he chose to uphold his Constitutional rights of freedom which he fought for in two foreign wars, because they were taken away from him due to a lack of separation of Church and State in this case.

Petitioner, Marie Hahn and Monsignor Faistl formed a personal private association at The Villas to further their religious beliefs. This association meets the criteria set forth in Roberts v. United States Jaycees, 486 U.S. 609 (1984), which has been followed and upheld in Bd. of Drs. of Rotary Int'l v. Rotary Club, 481U.S. 537, 545 (1987). Monsignor Faistl depends daily on Petitioner's assistance to perform his priestly duties and Petitioner depends on Monsignor Faistl's spiritual guidance and advice.

In Healy v. James, 408 U.S. 169, 181 (1972), the United States Supreme Court set forth the principle of freedom of association:

> "Among the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs. While the freedom of association is not explicitly set out in the Amendment, it has long been held to be implicit in the freedoms of speech, assembly, and petition. See, e.g. Baird v. State Bar of Arizona, 401U.S. 1, 6 (1971); NAACP v. Button, 371 U.S. 415, 430 (1963); Louisiana ex rel. Gremillion v. NAACP, 366 U.S. 293, 296 (1961); NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958)(Harlan, J., for a unanimous Court).

Petitioner has argued in this case that the preliminary injunction affects a substantial right made in a special proceeding and that it is a final appealable order and Petitioner cited Internatl. Diamond v. U.S. Diamond (1991), 70 Ohio App.3d 667, 671 in which the Court of Appeals followed National Socialist Party of America v. Village of Skokie, 432 U.S. 43, 44 (1977) and stated:

> "Given that an immediate appellate forum for review of an order that imposes a prior restraint upon the exercise of free speech is necessitated by the federal Constitution, we hold that in such cases it is not practical for the appellant to wait until the case has been concluded in the trial court before he may challenge the order. . ."

> "Because the preliminary injunction appealed from in this case imposes a prior restrain upon the exercise of free speech, we hold that it is an order that affects a substantial right made in a special proceeding and is, therefore, a final appealable order. . ."

Respondents argued that the amendment to O.R.C. 2505.02 precluded appeal of a preliminary injunction that restrains First Amendment rights. O.R.C. 2505.02 as amended states in part:

> "(A) AS USED IN THIS SECTION:
>
> (1) 'SUBSTANTIAL RIGHT' MEANS A RIGHT THAT THE UNITED STATES CONSTITUTION, THE OHIO CONSTITUTION, A STATUTE, THE COMMON LAW, OR A RULE OF PROCEDURE ENTITLES A PERSON TO ENFORCE OR PROTECT.

> (2) "SPECIAL PROCEEDING" MEANS AN ACTION OR PROCEEDING THAT IS SPECIALLY CREATED BY STATUTE AND THAT PRIOR TO 1853 WAS NOT DENOTED AS AN ACTION AT LAW OR A SUIT IN EQUITY.
>
> (B) AN ORDER IS A FINAL ORDER THAT MAY BE REVIEWED, AFFIRMED, MODIFIED, OR REVERSED, WITH OR WITHOUT RETRIAL, WHEN IT IS ONE OF THE FOLLOWING:
>
> (2) AN order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment,. . ."

This amendment was passed as a result of the decision made by the Supreme Court of Ohio in Polikoff v. Adam (1993), 67 Ohio St.3d 100, 108, which states at Footnote 8:

> ". . . In determining appealability pursuant to R.C. 2505.02, under the circumstances of this case, the first inquiry for any reviewing court is whether the order was entered in a special proceeding. If it was, the court must then inquire as to whether the order affected a substantial right."

By so ruling the Supreme Court of Ohio has eliminated the necessity of inquiry as to substantial rights/Constitutional rights, which are being violated and restrained by a preliminary injunction, thus depriving residents of Ohio due process and equal protection of the laws by not providing access to Ohio's courts for immediate appeal of a preliminary injunction which restrains First Amendment rights as directed by the United States Supreme Court decisions. See Erznoznik v. City of Jacksonville, 422 U.S. 205, 215:

> ". . . Thus, under the Equal Protection Clause, not to mention the First Amendment itself,' id., at 96 even a traffic regulation cannot discriminate on the basis of content unless there are clear reasons for the distinctions. . ."

Petitioner has researched the statutes pertaining to the appealability of preliminary injunctions in numerous states and she has found that the states researched unanimously allow for appeal of preliminary injunctions which follows United States Supreme Court rulings, (As an example, Petitioners cites Kenmen Engineering v. City of Union, 314 F.3d 468, 474 (10th Cir. 2002):

> ". . . Finally, even if the state court granted only a temporary injunction, a 'temporary injunction' is an appealable order under Oklahoma state law. 12 OKLA. STAT. ANN. § 993.('When an order . . . grants a temporary or permanent injunction . . . the party aggrieved thereby may appeal the order to the Supreme Court without awaiting the final determination in said cause.')

and therefore, there is no equal protection of the laws in Ohio because O.R.C. 2505.02(A)(2) is overbroad/unconstitutional. See Cooper v. Aaron, 358 U.S. 1, 3 (1958):

> "8. The interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States 'any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.'"

> "Article VI of the Constitution makes the Constitution the 'supreme Law of the Land.'. . ."
>
> ". . . 'If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery . . . .' United States v. Peters, 5 Cranch 115, 136. . ."

The statute is overbroad because it affects parties not before the Court in Ohio when they are involved in associations protected by the First Amendment which are restrained by a preliminary injunction. These associations could involve the small private personal associations or associations to engage in activities protected by the First Amendment, such as speech, assembly, petition for redress of grievances and the exercise of religion which could include substantial numbers of residents of Ohio, set forth in Roberts v. United States Jaycees, 486 U.S. 609 (1984). See City Council v. Taxpayers for Vincent, 466 U.S. 789, 801 (1984):

> ". . . In short, there must be a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds. See Erznoznick v. City of Jacksonville, 422 U.S. 205, 206 (1975). . ."

See Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973):

> ". . . Overbreadth attacks have also been allowed where the Court thought rights of association were ensnared in statutes which, by their broad sweep, might result in burdening innocent associations. See

Keyishian v. Board of Regents, 385 U.S. 589 (1967); United States v. Robel, 389 U.S. 258 (1967); Aptheker v. Secretary of State, 378 U.S. 500 (1964); Shelton v. Tucker, supra . . ."

The United States Supreme Court has upheld appeal of a preliminary injunction in an action which was brought for common-law nuisance in M.I.C., Ltd. v. Bedford Township, 463 U.S. 1341 (1983).

Respondents filed an action against Petitioner for trespass. As a state licensed facility Respondent, The Villas, has an obligation to follow Constitutional rights and the Patient's Bill of Rights, O.R.C. 3721.13, for each resident who resides in their facility. The Villas has opened up their facility by renting apartments to residents who choose to live there and therefore, under the Patients' Bill of Rights, The Villas has to permit visitors, which includes "sponsors" and friends, such as Petitioner, family members, attorneys, clergy, etc., and consequently, The Villas could not bring a common-law trespass action against Petitioner for visiting a resident at his invitation. This illustrates the illegality of the preliminary injunction granted to Respondents, The Villas, against Petitioner and upheld by the state courts. Respondents used a letter written by the Bishop of Columbus to Petitioner as a basis for their trespass claim. The letter which is part of the evidence in the record in this case, states in part "Therefore, I want to inform you that the restrictions placed on your contact with Monsignor Faistl are to continue indefinitely." Respondent did not follow the law as set forth in the Constitution and O.R.C. 3721.13 which includes not only Monsignor Faistl's rights, who is not before the Court, but Petitioner's rights as Monsignor Faistl's "sponsor," The Villas followed the direction of the Bishop of Columbus, eliminating the separation of Church and State in a state

licensed facility. See Marsh v. Alabama, 326 U.S. 701, 506, 510 (1945):

> ". . . Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. Cf. Republic Aviation Corp. v. Labor Board, 324 U.S. 793, 798, 802, n. 8. . ."

> ". . . But when decisions by State courts involving local matters are so interwoven with the decision of the question of Constitutional rights that one necessarily involves the other, State determination of local questions cannot control the Federal Constitutional right."

Respondent, The Villas, was issued a citation for violation of O.R.C. 3721.13(A)(21), by the Ohio Department of Health because The Villas decided not to follow the law, but to follow the Bishop's order. Respondents' violation of the law caused any disruptions which they claim took place and which they alleged as a basis for their trespass action. Petitioner assisted Monsignor Faistl for approximately 18 months at The Villas. Respondent has produced no evidence of any disruptions caused by Petitioner as a "sponsor." Petitioner attempted to protect Monsignor Faistl's Constitutional and state rights which Respondents were violating. Pursuant to O.R.C. 3721.13, that is a matter of law, not a disruption. Respondent, The Villas, has been issued a second citation for violation of O.R.C. 3721.13(A)(21) in Monsignor Faistl's case.

Petitioner had no choice but to appeal the invalid order of preliminary injunction issued by the trial court because appeal is the proper procedure proscribed by the United States Supreme Court. See Maness v. Meyers, 419 U.S. 449, 458 (1975):

> ". . . If a person to whom a court directs an order believes that order is incorrect the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal. . ."

CONCLUSION

For the foregoing reasons: Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

Respectfully submitted,

Marie Hahn, Petitioner
Pro Se
1267 Westphal Avenue
Columbus, Ohio 43227
(614) 237-3524

Dated this 26th day of July, 2004

APPENDIX A

THE SUPREME COURT OF OHIO

Case No. 03-2200

[Filed April 28, 2004]

The Villas at St. Therese Assisted Living,
Appellee,

v.

Marie Hahn,
Appellant.

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, appellee's motion to strike notice of appeal, and appellee's motion to dismiss Marie Hahn's request for jurisdiction, the Court declines jurisdiction to hear the case, dismisses the appeal as not involving any substantial constitutional question, and denies the motion to strike and motion to dismiss as moot.

COSTS:

Docket Fee: $40.00, paid by Hahn's Electric Company.

(Franklin County Court of Appeals; No. 03AP1126)

/s/
THOMAS J. MOYER
Chief Justice

APPENDIX B

THE SUPREME COURT OF OHIO

Case No. 03-2200

[Filed January 21, 2004]

The Villas at St. Therese Assisted Living, Appellee,	)
v.	)
Marie Hahn, Appellant.	)

ENTRY

This cause is pending before the Court as a discretionary appeal and claimed appeal of right. Upon consideration of appellant's motion for stay of preliminary injunction,

IT IS ORDERED by the Court that the motion for stay of preliminary injunction be, and hereby is, denied.

(Franklin County Court of Appeals; No. 03AP1126)

/s/
THOMAS J. MOYER
Chief Justice

APPENDIX C

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Case No. 03AP-1126
(Regular Calendar)

[Filed December 18, 2003]

The Villas at St. Therese Assisted Living, Plaintiff-Appellee,	)
v.	)
Marie Hahn, Defendant-Appellant.	)

JOURNAL ENTRY

Appellant's pro se December 8, 2003 motion for reconsideration of this court's November 26, 2003 entry of dismissal is denied.

/s/ _____
Judge Peggy Bryant

/s/ _____
Judge Donna Bowman

/s/
Judge William A. Klatt

APPENDIX D

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Case No. 03AP-1126
(REGULAR CALENDAR)

[Filed November 26, 2003]

The Villas at St. Therese Assisted Living, Plaintiff-Appellee,	)
v.	)
Marie Hahn, Defendant-Appellant.	)

JOURNAL ENTRY OF DISMISSAL

Appellant has not demonstrated that an appeal .from the trial court order granting appellee a preliminary injunction would not afford appellant a meaningful or effective remedy following final judgment by the trial court. Accordingly, appellant's November 14, 2003 motion, to dissolve the.preliminary injunction granted by-the trial court is denied. Appellee's November 24, 2003 motionto dismiss is granted. This appeal is dismissed for lack Of a final, appealable order. Further, a motion to dissolve a preliminary.injunction is not an. appropriate attack on the trial court judgment.

/s/ _____
Judge Peggy Bryant

/s/ _____
Judge Susan Brown

/s/ _____
Judge William A. Klatt

APPENDIX E

IN THE FRANKLIN COUNTY COURT
OF COMMON PLEAS
COLUMBUS, OHIO

Case No. 03-CVC9 10620
JUDGE CAIN

[Filed October 14, 2003]

THE VILLAS AT ST. THERESE ASSISTED LIVING, INC. Plaintiff,	)
v.	)
MARIE HAHN, Defendant.	)

ORDER OF PRELIMINARY INJUNCTON

This cause came on to be heard on Plaintiffs Verified Complaint for Injunctive Relief, Plaintiff's request for preliminary injunction, and evidence and testimony offered during tim preliminary injunction hearing held on October 10, 2003, and it appearing to the Court that there is good cause for granting Plaintiff's request for preliminary injunction, and that Plaintiff will suffer irreparable harm if said motion is not granted, the Court hereby Orders that:

1. Marie Hahn is hereby enjoined from entering upon the premise of The Villas; and

2. Marie Hahn, and any one on her behalf, is hereby enjoined from taking any action to remove Monsignor Faistl from the Villas;

This Order shall remain in effect during the pendency of this action or until further order of this Court.

IT IS SO ORDERED.

/s/
Judge David E. Cain